

1 HONORABLE RONALD B. LEIGHTON
2
3
4
5
6

7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 KEVIN NEELEY,

11 v. Petitioner,

12 JEFFREY A UTTECHT,

13 Respondent.

14 CASE NO. C19-5667RBL

15 ORDER

16 THIS MATTER is before the Court on limited remand from the Ninth Circuit [Dkt. #
17 22]. The Ninth Circuit's Order asks the District Court to determine whether to grant or deny
Petitioner Neeley a Certificate of Appealability under 28 U.S.C. § 2253(c).

18 The Magistrate Judge's Report and Recommendation [Dkt. # 9] explained at pages 8 – 9
19 that Neeley had “not made a substantial showing of the denial of a constitutional right,” and
20 recommended that the District Court DENY a Certificate of Appealability.

21 This Court's Order adopting that Report and Recommendation [Dkt. # 11] declined to
22 issue a Certificate of Appealability, for the reasons articulated in the Magistrate Judge's Report
23 and Recommendation:

1 (4) The Court will NOT issue a certificate of appealability under 28 U.S.C. §2253 for
2 the reasons articulated in the Report and Recommendation;

3 [Dkt. # 11 at 2]. The purpose of the limited remand is thus unclear to this Court. It has already
4 denied Neeley a Certificate of Appealability.

5 For the reasons stated in the Report and Recommendation and this Court's Order
6 adopting it, the Court reiterates that Neeley has failed to exhaust his state court remedies and has
7 failed to make a substantial showing of the denial of a constitutional right. In this Court's view,
8 reasonable jurists could not conclude that un-exhausted claims deserve encouragement to
9 proceed further. *See Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). The Court therefore
10 **DECLINES** to issue a Certificate of Appealability.

11 **IT IS SO ORDERED.**

12 Dated this 29th day of January, 2020.

13 
14 Ronald B. Leighton

15 United States District Judge